

The record is herein adopted by the Appeals Board as specifically set forth in the Award of the Administrative Law Judge.

ISSUES

Claimant appeals from a decision by Administrative Law Judge Alvin E. Witwer finding that claimant's injury did not arise out of and in the course of her employment. The parties have stipulated as to all other issues including nature and extent of disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After review of the record and consideration of the arguments of the parties the Appeals Board finds, for the reasons stated below that the claimant's injury did not arise out of and in the course of her employment. Accordingly the June 27, 1994 order of Administrative Law Judge Alvin E. Witwer is affirmed.

The record reflects that claimant was injured when she slipped and fell while walking from her car to the front door of her place of employment. Her job duties included opening the business at 7:00 a.m. There had been sleet and freezing rain the evening before. The area where claimant fell was a public sidewalk. She had parked adjacent to parking spaces reserved for customers of her employer, had exited her car and was on the sidewalk approximately six to eight feet from the front door at the time she fell. She was carrying the keys to the front door in her hand.

K.S.A. 44-508a(f) provides specifically that injuries occurring while on the way to assume the duties of employment or after leaving the duties are not injuries which arise out of and in the course of employment so long as the proximate cause of the injury is not the employer's negligence. In this case, claimant was about to but had not yet assumed her employment duties. Claimant emphasises that claimant was carrying the keys. This does not, in the opinion of the Appeals Board, mean she was at that point performing duties for her employer. The evidence also does not establish negligence of the employer as the cause of the injury.

K.S.A. 44-508a provides an exception as follows:

"An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to and from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealing with the employer."

In this case the evidence established first that the injury did not occur on the premises of the employer. It was a public sidewalk. It appears from the evidence that the only entrance to respondent's facility was the front entrance so that one might conclude that claimant was on the only available route. However, the circumstances fail to meet the remaining criteria. There is no evidence of a special risk or hazard from this route. The only evidence related to the use of the route by the public is that the public would not normally use it except in dealing with the respondent. However, the evidence also indicates that the route may and sometimes is used for other purposes.

The Appeals Board therefore finds the claimant was on her way to work but had not yet begun work. The route she was using was not one which involved a special risk or

hazard and was not one used exclusively in dealing with the employer. The Appeals Board therefore finds that the injury did not arise out of and in the course of employment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of the Administrative Law Judge dated June 27, 1994 should be affirmed.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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